

### III. REMARKS

Claims 1-9 have been amended to overcome the Examiner's objections.

Regarding the rejection under 35 U.S.C. 112, second paragraph, it is noted that the enablement and definiteness requirements are distinct. See Markman v. Westview Instruments, 517 U.S. 370, 38 USPQ2d 1461, 1463, and Process Control Corp. v. HydReclaim Corp., 52 USPQ2d 1029, 1034 (fn. 2). Thus the claims need not recite details of how to make and use the claimed invention. Further, breadth is not indefiniteness (MPEP 2173.04) and the claims should define the invention with a "...reasonable degree of precision and particularly...". In re Miller, 169 USPQ2d 597, 599. Further, definiteness must be analyzed in light of the disclosure (MPEP 2173.02).

Further, claims 1-9 meet the definiteness criteria under 35 USC 112, second paragraph because one skilled in the art reading the claims in light of the specification and drawings would clearly understand the meaning of the claim language. The test for definiteness under 35 U.S.C. §112, second paragraph is whether a person skilled in the art would understand the claim language in light of the specification and drawings. Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 1 USPQ2d 1081 (Fed. Cir. 1986). Definiteness of claim language must be analyzed, not in a vacuum, but in light of the content of the application disclosure (see MPEP 2173.02). There is nothing vague or indefinite about the language of claims 1-9. Therefore, the examiner should withdraw his rejection. Prior to the decision of the US Supreme Court in Festo Corporation V. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., Applicant's Attorney would have made the change for the examiner, but now, after Festo, no changes will be made under a 35 U.S.C. §112, second paragraph rejection unless clearly necessary beyond a preponderance of evidence. This is not the case in the present 35 U.S.C. §112, second paragraph rejection. The examiner is requested to reconsider his rejection.

Hence claims 1-9 are not unpatentable under 35 U.S.C. 112, second paragraph, since they are definite when read in the light of the disclosure, which is all the law requires.

Claims 1-9 are not unpatentable under 35 U.S.C. 102(e) as being anticipated by Layton.

Claim 1 recites a gateway of a telephony service provider. Since this is not disclosed, in any way in Layton, the claims define over the reference. It is noted that the VAPA 21, that the Examiner appears to be pointing to in Layton, is not in any way a gateway of a telephony service provider as called for in claim 1. Further, in Layton there is no disclosure that a user has the slightest impact on the gateway behavior, as otherwise called for in claim 1. The Examiner is requested to specifically identify the features in Layton that read on the features recited in the claims of the instant application. Indeed, it appears that Layton is wholly unrelated to the features of the claimed invention and would not be obvious to modify the result in the claimed invention (MPEP 2143.01).

For these reasons, claims 1-9 define over Layton under 35 U.S.C. 102 (e), and thus this rejection should be withdrawn.

Also, since Layton is for the problem of augmented audio reality and not that of user identity security as is the presently claimed invention, it is not obvious to modify to result in the claimed invention (MPEP 2143.01).


For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

10/664,257

Response to the Office Action mailed 20 March 2007

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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6/20/07  
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